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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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In re	:	Chapter 11
	:	
BED BATH & BEYOND INC., <i>et al.</i> ,	:	Case No. 23-13359 (VFP)
	:	
Debtors.	:	(Jointly Administered)
-----X		

SUPPLEMENTAL OBJECTION IN FURTHER SUPPORT OF OPPOSITION OF DALY CITY SERRAMONTE CENTER, LLC TO DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS TO ASSUME AND ASSIGN LEASE FOR STORE NO. 3108

Daly City Serramonte Center, LLC (the "Landlord"), landlord to debtor Bed Bath & Beyond Inc., files this supplemental objection (the "Supplemental Objection") in further support of its *Limited Objection of Regency Centers L.P. and Opposition of Daly City Serramonte Center, LLC to Debtors' Motion for Order Authorizing Debtors to Assume and Assign Unexpired Non-*

Residential Real Property Leases for Store Nos. 3108 and 385 (the “Initial Objection”)¹ filed in the above-captioned cases on July 12, 2023. In support of this Supplemental Objection, the Landlord respectfully states:

SUPPLEMENTAL BACKGROUND

1. The Initial Objection raised objections to the Debtors’ proposed assignment of two leases: the Serramonte Lease and the Uncommon Lease. The Landlord’s objections regarding the Uncommon Lease have been resolved, but its objections to the proposed assignment of the Serramonte Lease to Burlington Stores (the “Proposed Burlington Assignment”) remain outstanding.

2. As discussed in the Initial Objection, the Proposed Burlington Assignment violates section 365 of the Bankruptcy Code for several reasons, including because:

- the Cure Amount is incorrect;
- the Debtors do not provide for the payment of all accrued and unbilled obligations under the Serramonte Lease; and
- the Debtors have failed to meet their burden to establish adequate assurance of Burlington Stores’ future performance under the Serramonte Lease pursuant to section 365(b)(3) of the Bankruptcy Code.²

3. Contemporaneously herewith, the Landlord filed the *Declaration of Ernst A. Bell in Support of Opposition of Daly City Serramonte Center, LLC to Debtors’ Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 3108* (the “Bell

¹ Docket No. 1328. Capitalized used but not defined in this Supplemental Objection have the meanings ascribed to them in the Initial Objection.

² The Landlord reserved its rights to raise this argument at the sale hearing. *See* Initial Objection, ¶ 25.

Declaration”). As explained in the Bell Declaration, the Proposed Burlington Assignment would result in a breach of the exclusive use provision in the Ross Lease, a related lease with another off-price retailer at the Serramonte Center shopping center (“Serramonte Center”).

SUPPLEMENTAL OBJECTION

4. The Landlord has reviewed the *Pinnacle Hills, LLC’s Sur-Reply in Further Support of its Objection to Debtors’ Motion for Order Authorizing Debtors to Assume and Assign Lease for Store No. 1142* (the “Pinnacle Hills Sur-Reply”)³ and agrees with, joins and incorporates by reference the arguments made therein regarding section 365(b)(3)(C) of the Bankruptcy Code.

5. As discussed in the Pinnacle Hills Sur-Reply, section 365(b)(3)(C) is clear on its face and expressly prohibits the non-consensual assignment of a debtor’s shopping center lease if the proposed assignee’s tenancy will violate a use, exclusivity or radius provision in another lease at the shopping center—which is exactly what the Proposed Burlington Assignment will do here. *See* 11 U.S.C. § 365(b)(3)(C).

6. The Court should not follow *Toys*, which ignores the plain meaning of section 365(b)(3)(C), is not binding, and was wrongly decided for all of the reasons discussed in the Pinnacle Hills Sur-Reply. Rather, the Court should follow Congress’s guidance and enforce section 365(b)(3)(C) as written.

7. If the Court approves the Proposed Burlington Assignment, the Landlord will suffer a minimum of approximately [REDACTED] in damages under the rent abatement provision in the Ross Lease⁴ and suffer significantly greater damages under the lease termination

³ Docket No. 1926.

⁴ *See* Bell Declaration, ¶ 12.

provision of the Ross Lease.⁵ This is precisely the type of harm Congress intended to avoid when it enacted section 365(b)(3)(C).

8. For all of these reasons, as well as those set forth in the Initial Objection, the Bell Declaration, and the Sur-Reply, the Court should deny the Proposed Burlington Assignment.

RESERVATION OF RIGHTS

9. The Landlord reserves the right to make such other and further objections as may be appropriate based upon any new information provided by the Debtors or Burlington, including requests for adequate protection under section 363(e) of the Bankruptcy Code.⁶

⁵ See *id.*, ¶ 13.

⁶ Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use sale, or lease as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e).

WHEREFORE, the Landlord requests that the Court enter an order denying the Proposed Burlington Assignment and granting such other relief as the Court deems just and proper.

Dated: August 18, 2023

Respectfully submitted,

/s/ Robert L. LeHane

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